Supreme Court, U.S.
FILED
961583 APR 7 1997
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No._____

In The

Supreme Court of the United States

October Term, 1996

ADA VAN HARKEN, ALEX FRENCH and MICHAEL BENNETT, individually and as class representatives,

Petitioners,

v.

CITY OF CHICAGO,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether it violates Due Process for the City to punish citizens with criminal fines after a hearing in which the City puts on no evidence, other than a certified complaint, before an adjudicator who is a private lawyer that the City itself has hired and has instructed to cross-examine the accused to counter any theoretical advantage that the accused might have as the only live witness.

II. Whether it violates Due Process for the City to impose a criminal fine via a civil proceeding in which the State puts on no witnesses or evidence other than a certified complaint.

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Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir. 1997).

JURISDICTION

The judgment of the Court of Appeals was rendered on January 6, 1997. The statutory provision believed to confer on this Court jurisdiction to review the judgment complained of herein is 28 U.S.C. § 2101(c). See also Supreme Court Rule 13(3).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

The Fifth Amendment to the United States Constitution

The Fourteenth Amendment to the United States Constitution

42 U.S.C. § 1983

28 U.S.C. § 1331

The Chicago Code of 1911, § 85

The Chicago Code of 1911, § 98

The Chicago Code of 1911, § 102

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STATEMENT OF THE CASE

This class action was brought in federal court pursuant to the jurisdictional grant over federal questions in 28 U.S.C. § 1331.

The district court certified a large class numbering "in the thousands" and dismissed the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Van Harken v. City of Chicago, 906 F.Supp. 1182, 1187 (N.D. Ill. 1995). The question in this case concerns whether a state may cross-examine the accused and to what extent the state may decriminalize historically criminal offenses. At issue is the administrative adjudication system that the City of Chicago set up to adjudicate certain petty criminal offenses. The petty criminal offenses involved in the instant matter are traffic violations. As the Court of Appeals recognized in its opinion, "[i]n Illinois before 1987 and in a majority of the states to this day, parking violations were and are technically criminal violations . .

. and the violator was and in the other states is entitled to the usual safeguards of the criminal process." Van Harken v. City of Chicago, 103 F.3d 1346, 1349 (7th Cir. 1997). In 1990, the City of Chicago decriminalized parking violations and set up an administrative adjudication system. Under this system, the parking ticket serves as a "notice" or a "citation." § 9-4-010 (App. 53) ; § 9-100-040(f) (App. 53).

As the Court of Appeals recognized, these citations are adjudicated by the City's hired private lawyers. Van Harken v. City of Chicago, 103 F.3d 1346, 1350 (7th Cir. 1997). The "citations" are not adjudicated by "real" judges. Id., at 1353.

In deciding whether to punish the accused with a criminal fine, this private lawyer subjects the accused to a "searching cross-examination." Van Harken, 103 F.3d at 1350.

In contrast, the police officer does not need to show up at the hearing. As the Court of Appeals recognized, "[t]he police officer who wrote the ticket is not expected to participate in the hearing," and so, "[o]rdinarily, the only live participant in the hearing besides the hearing officer will be the respondent, that is the recipient of the ticket." Van Harken, 103 F.3d at 1350.

This is so, because the City declared as official policy that "[a] Parking Violation containing the requisite information which is affixed to the motor vehicle (either stuck on, or under the windshield wiper) and signed by the issuing officer certifying that it has been so affixed . . . shall be deemed to have met the City's evidentiary burden." The City's evidentiary burden is set by ordinance as "a preponderance of the evidence." § 9-100-080(e) (App. 53). Thus, the City declares that it has proven its case by a preponderance without having tendered a word of testimony from the citizen's accuser.

The Court of Appeals ruled that the "searching examination" that the City's private lawyer conducts was

"legitimate." According to the Court of Appeals, the citizen's accuser, the police officer, need not appear at the hearing. Van Harken, 103 F.3d at 1351-52. Therefore, the court reasoned the citizen contesting a parking violation as "the only live witness at the hearing . . . has a natural advantage over the City." Id. at 1352. Thus, according to the Court of Appeals, "[a] searching examination of the respondent is a legitimate counter to this advantage." Id.

The Court of Appeals also ruled the City may constitutionally decriminalize historically criminal offenses because "nothing in the due process clause forbids the reclassification of criminal offenses as civil violations." Van Harken, 103 F.3d at 1350. According to the Court of Appeals, "[a] criminal fine of $100 is much less severe than many incontestably civil penalties, so if the state decides to convert it to a civil penalty there is no reason to impose the safeguards of criminal procedure." Id.

REASONS FOR ALLOWANCE OF THE WRIT

For the first time in our Nation's history, a court has declared it constitutionally "legitimate" for the state to impose criminal fines via a civil hearing consisting only of an appearance before the state's hired private lawyer who subjects the accused to a searching cross-examination while the citizen's accuser never even has to show up. Because "the essence of our democracy" is conveyed to the people via the process employed in petty criminal offenses, "[j]ustice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts." Mayer v. City of Chicago, 404 U.S. 189, 197 (1971). It is evident that the ruling of the Court of Appeals implicates important constitutional issues the effects of which the average citizen is certain to feel.

I. It violates Due Process for the City to punish citizens with criminal fines after a hearing in which the City puts on no evidence other than a certified complaint before an adjudicator who is a private lawyer that the City itself has hired and has instructed to cross-examine the accused to counter any theoretical advantage that the accused might have as the only live witness.

The precise ruling of the Seventh Circuit Court of Appeals bears repeating: the City of Chicago may constitutionally impose criminal fines in a civil proceeding, hire its own private lawyer to do the decision-making, and have its private lawyer conduct a "searching cross-examination" of the accused, while the citizen's accuser need not even show up.

To use the words of another Court of Appeals, this sort of procedure is not only "unknown in our federal courts, but it is unknown, so far as we can discover, in any state." Figueroa Ruiz v. Delgado, 359 F.2d 718, 720-21 (1st Cir. 1966). The Seventh Circuit committed serious error given that "[o]ne of the fundamental rights of a litigant under our judicial system" is the right to "a fair trial in a fair tribunal." Knapp v. Kinsey, 232 F.2d 458, 465 (6th Cir. 1956) As this Court aptly put it, "[f]air trials are too important a part of our free society to let prosecuting judges be trial judges . . ." In re Murchison, 349 U.S. 133, 137 (1955).

Accordingly, the holding of the Seventh Circuit Court of Appeals stands in sharp contrast to the other circuits that have addressed the question, including the Seventh Circuit itself. See, e.g., United States v. Tobin, 426 F.2d 1279, 1281-82 (7th Cir. 1970); Figueroa Ruiz v. Delgado, 359 F.2d 718, 720-21 (1st Cir. 1966); United States v. Sheldon, 544 F.2d 213, 218-19 (5th Cir. 1976); Rocha v. Great American Ins. Co., 850 F.2d 1095, 1099-1100 (6th Cir. 1988); Knapp v. Kinsey, 232 F.2d 458 (6th Cir. 1956); United States v. Singer, 710 F.2d 431, 437 (8th Cir. 1983) (en banc); see also Maheu v. Hughes Tool Co., 569 F.2d 459, 472

(9th Cir. 1977) (recognizing that when a judge interrupts with a leading question embodying an explanation for witness undergoing cross-examination, "nothing can be more damaging to a cross examination of a lying, prevaricating, equivocating, mendacious, dishonest, deceitful, untruthful, tergiversating witness").

The First Circuit has concluded that a judge simply may not simultaneously act as a proponent for the State and act as the decision-maker. Figueroa Ruiz v. Delgado, 359 F.2d 718 (1st Cir. 1966). In the procedure at issue in Figueroa, the State's witnesses took the stand at the request of a real trial judge who would interrogate them. Id. at 719. These witnesses would then be cross-examined by counsel for the defendant. Id. Redirect, limited to what was brought out on cross, would then be conducted by the judge. Id. Thereafter, if the defendant had witnesses, or chose to take the stand, the defendant's counsel would conduct direct examination. Id.

When defendant's counsel completed direct examination, the judge would cross-examine the accused and his witnesses. Id. Afterwards, defendant's counsel would conduct any redirect. Id. The judge was then able to call prosecution witnesses for the purpose of rebuttal. Id. Once all witnesses finished testifying, the judge would decide the case. Id. at 720. The Figueroa court noted that the judge "may not be [an] ardent striving, advocate." Nonetheless, the court recognized that "if he has to see that justice is done for the people's cause, he must, to some extent at least, act as prosecutor." Id. at 720.

The court ruled that "a federal or state court procedure, by which the judge was the one to introduce the government's evidence, and cross-examine on the government's behalf, would neither satisfy the appearance of justice nor be considered free of the 'possible temptation not to hold the balance nice, clear and true between the State and the accused,' and hence would deny the accused due process of law." Id. at 721-22.

The court reasoned that "the judge must alternate roles in rapid succession, or even assume both at once" (Id. at 720):

> When interrogating a witness he is examining for the people, but when listening to the answer to the question he has propounded, he is weighing it as judge, and at the same time considering what question, as prosecutor, to ask next. Correspondingly, when he listens to the answer to a question put by the defense, he must, as judge, impartially evaluate the answer, but, simultaneously, as prosecutor, he must prepare the next question for cross-examination.

Id. After recognizing that "the mental attitudes of the judge and prosecutor are at considerable variance," the court concluded that "[t]o keep these two personalities entirely distinct seems an almost impossible burden for even the most dedicated and fairminded of men." Id.

It is worth noting that in Figueroa Ruiz v. Delgado, 359 F.2d 718 (1st Cir. 1966), a "real" judge was deciding the cases, and the State did in fact put on witnesses to support its burden of proof. Id. at 719. In the instant matter, the City of Chicago has its own private lawyer deciding cases (Van Harken v. City of Chicago, 103 F.3d 1346, 1353 (7th Cir. 1997)), and the City never needs to put on a word of testimony from the police officer making the accusations (Van Harken, 103 F.3d at 1350).

Perhaps because fair trials before an impartial tribunal are so integral to our free democracy, no state has dared to set up the inquisitorial process at issue here. The cases in this area have drawn a bright constitutional line: a due process violation occurs when a judge in a cause participates excessively in the questioning of witnesses. No court has crossed this line by concluding that due process allows a judge to conduct a "searching cross-examination" of the accused to counter a theoretical advantage

that the accused might have in simply being the only one to show up at the hearing. Much less, no court has construed the Due Process Clause as allowing the State to have its own private lawyer do the decision-making or excuse the State from putting on any evidence besides a certified complaint. Without exception, every court, including a panel of the Seventh Circuit, to have considered whether a judge may conduct a searching cross-examination of the accused has concluded that such a procedure offends the fundamental due process right to a fair trial before a fair tribunal.

In addition to the First Circuit, the Fifth Circuit has held that "[a] trial judge 'should never assume the role of prosecuting attorney and lend the weight of his great influence to the side of the Government . . . In our system of administering justice, the functions of the trial judge and the prosecuting attorney are separate and distinct; they must not be confused. The trial judge has a duty to conduct the trial carefully, patiently, and impartially. He must be above even the appearance of being partial to the prosecution." United States v. Sheldon, 544 F.2d 213, 218-19 (5th Cir. 1976) (holding that "the judge's interruptions by cross-examination and comment failed to meet [these] requirements"); see also United States v. Lanham, 416 F.2d 1140, 1143 (5th Cir. 1969) (reversing conviction because trial judge "took over prosecution"); United States v. Cisneros, 491 F.2d 1068, 1074 (5th Cir. 1974) ("A trial judge must not appear to be partisan for the prosecution, or in any way exhibit a prosecutor's zeal"); see also Newman v. A.E. Staley Mfg Co., 648 F.2d 330 (5th Cir. 1981); McCullough v. Beech Aircraft Corp., 587 F.2d 754 (5th Cir. 1979); United States v. Daniels, 572 F.2d 535 (5th Cir. 1978); United States v. Candelaria-Gonzalez, 547 F.2d 291 (5th Cir. 1977); United States v. Fischer, 531 F.2d 783 (5th Cir. 1976); United States v. Noles, 524 F.2d 1262 (5th Cir. 1975); United States v. Clement, 504 F.2d 921 (5th Cir. 1974); United States v. Williams, 473 F.2d 507 (5th Cir. 1973); Braswell v. United States, 200 F.2d 597 (5th Cir. 1952).

Not surprisingly, the Sixth Circuit has also concluded that

cross-examination is not the proper function of a fair and impartial judge and the party so affected is denied substantial justice. See, e.g., Rocha v. Great American Ins. Co., 850 F.2d 1095, 1099-1100 (6th Cir. 1988). In Rocha, the court explicitly recognized that "taking over the direct examination of an expert" and "commenting on the substance of expert's testimony and methodology" (Id. at 1099) "seem more appropriate for a cross-examiner than a fair and impartial judge." Id. at 1100. In such circumstances, a judge abuses his authority by abandoning his proper role and assuming the role of an advocate. Id. Accordingly, the Sixth Circuit held that in such circumstances, the party is denied his right to a fair and impartial judge.

In Knapp v. Kinsey, 232 F.2d 458 (6th Cir. 1956) the judge "participated actively in the examination and cross-examination of the defendant." Id. at 464. The Knapp court held that the defendant was denied "[o]ne of the fundamental rights of a litigant under our judicial system"—his right to "a fair trial in a fair tribunal." Id. at 465. When a judge actively participates in the questioning of witnesses, he "step[s] down from the bench to assume the role of advocate." Id. at 467; see also Watson v. Chesapeake & Ohio Rwy Co., 287 F.2d 662 (6th Cir. 1961).

Indeed, the Seventh Circuit itself had addressed this issue—and concluded that a due process violation occurs when a judge participates in a hearing by questioning the accused. In United States v. Tobin, 426 F.2d 1279, 1281-82 (7th Cir. 1970), the trial judge asked the defendant sixteen questions that related to the defendant's motivations. The Seventh Circuit held that such questioning denied the defendant his right to a fair and impartial trial. According to the court, "[t]he cross-examination by the trial court went directly to the question of defendant's credibility. In these circumstances, we are compelled to conclude that the defendant was denied a fair trial when the trial court subjected him to an intense cross-examination . . ." Id. at 1283.

In an en banc decision, the Eighth Circuit concluded that

"[a] trial judge should **never** assume the burden of direct or cross-examination." United States v. Singer, 710 F.2d 431, 437 (8th Cir. 1983) (en banc) (emphasis supplied). In United States v. Singer, the trial judge helped the government counsel by instructing him on when, how, and on what grounds to object. Id. at 433. The judge was also concerned that the government counsel elicit testimony properly and without objections. Id. The trial judge also directed government counsel when to end questioning and in fact took over the questioning himself. Id.

In the case, "most of the court's interventions were designed to clarify government testimony, to help counsel when he should or should not make objections, to instruct government counsel on how to make his evidence more intelligible . . ." Id. at 436. "On the whole," it seemed clear that "the court believed the evidence of the defendants' guilt was strong, and that justice might not be done if government counsel were left to his own devices." Id.

Though the Eighth Circuit pointed out that "[t]o be sure, every intervention by the trial court in the proceedings was not on the side of the government, and some of the comments that the court made may have been helpful to the defense," the court still concluded that the defendants were deprived their right to a fair and impartial adjudication. Id. at 436. According to the court, "[a] trial judge should seldom intervene in the questioning of a witness and then only to clarify isolated testimony." Id. Therefore, the court held that "a trial judge cannot assume the mantle of an advocate and take over cross-examination for the government to merely emphasize the government's proof or to question the credibility of the defendant and his witnesses." Id. at 437. The court concluded that defendants were denied "that fair and impartial trial which the Constitution and the law of the land accords to every citizen." Id.

Beginning with Illinois itself, every state court that has

addressed the question has concluded that when a judge cross-examines a party, a due process violation occurs. See, e.g., People v. Pelletri, 153 N.E. 591, 593 (Ill. 1926) ("[n]o person can successfully perform the functions of prosecutor and judge. They are inconsistent."); People v. Santucci, 180 N.E.2d 491, 493 (Ill. 1962) (holding that a judge is simply not "warranted in conducting an extensive examination of witnesses, for to do so is to usurp the function of counsel."); see also People v. Moriarity, 213 N.E.2d 516, 520 (Ill. 1966); People v. Scowley, 187 N.E. 415, 418 (Ill. 1933)("extended interrogation of witnesses has been repeatedly condemned by this court"); Dunn v. People, 50 N.E. 137 (Ill. 1898); People v. Bernstein, 95 N.E. 50 (Ill. 1911).

A number of states have joined Illinois and similarly concluded that a violation of due process occurs when a judge cross-examines witnesses. **Florida**: Williams v. Florida, 143 So.2d 484 (Fla. 1962); **Hawaii**: State v. Silva, 890 P.2d 702 (Haw. Ct. App. 1995); **Indiana**: Kennedy v. Indiana, 280 N.E.2d 611 (Ind. 1972); **New York**: People v. Rogers, 629 N.Y.S.2d 445 (N.Y. Sup. Ct. App. Div. 1995); **Ohio**: Ohio v. Prokos, 631 N.E.2d 684 (Ohio Ct. App. 1993); **Pennsylvania**: Commonwealth v. Claiborne, 102 A.2d 900 (Pa.Super.Ct. 1953). Research has not unearthed a case allowing an adjudicator to conduct a searching cross-examination.

The ruling of the Court of Appeals that a judge may "legitimately" conduct "a searching cross-examination" of the accused to counter any theoretical advantage that the accused might have over the state simply cannot be reconciled with the weight of authority in this country. Given that "[f]air trials are too important a part of our free society to let prosecuting judges be trial judges" (In re Murchison, 349 U.S. 133, 137 (1955)), Petitioners respectfully submit that the ruling of the Seventh Circuit causes a conflict on an issue that is too crucial to our democratic union to allow it to stand.

II. It violates Due Process for the City to impose a criminal fine via a civil proceeding in which the State puts on no witnesses or evidence other than a certified complaint.

The Court of Appeals ruled that "[a] criminal fine of $100 is much less severe than many incontestably civil penalties, so if the state decides to convert it to a civil penalty there is no reason to impose the safeguards of criminal procedure." According to the Court of Appeals, "nothing in the due process clause forbids the reclassification of criminal offenses as civil violations."

In Penfield Co. v. SEC, 330 U.S. 585 (1947), this Court ruled that a criminal fine of $50.00 could not be imposed via a civil proceeding. In Hicks v. Feiock, 485 U.S. 624, 632 (1988), this Court recognized "the fundamental proposition that criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings, including the requirement that the offense be proved beyond a reasonable doubt." Only three years ago, in Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994) this Court recognized that "[a] government may not impose criminal fines without first establishing guilt by proof beyond a reasonable doubt." Id. at 778. That conclusion was hardly a novel proposition of law. In Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 449 (1911), this Court recognized that it was as "fundamentally erroneous" for a court to impose criminal punishment in a civil proceeding "as if in an action of 'A vs. B, for assault and battery,' the judgment entered had been that the defendant be confined in prison for twelve months." This Court recognized that a sentence that is "wholly punitive" may be properly imposed only in a criminal proceeding. Gompers, 221 U.S. at 444. The ruling of the Court of Appeals is in direct conflict with the foregoing decisions of this Court.

The conclusions of this Court in Kurth Ranch, Penfield, Hicks, and Gompers have not been questioned by other Courts

of Appeals. Accordingly, the conclusion of the Seventh Circuit Court of Appeals that criminal fines may be imposed without the safeguards of criminal procedure stands in sharp contrast to the conclusions of the other Courts of Appeals to have addressed the question: "It is, one would think, fundamental to our constitutional system that a court cannot order a defendant to suffer a criminal penalty or to pay a criminal fine for any offense for which the defendant has not been formally convicted." United States v. Snider, 945 F.2d 1108, 1113 (9th Cir. 1991); see also Satcorp Internat'l Group v. China Nat'l Silk Import & Export Corp., 101 F.3d 3, 6 (2d Cir. 1996) (holding that if a court wishes to impose "a criminal fine, it must first provide all of the procedural protections associated with criminal proceedings"); United States v. Spectro Foods Corp., 544 F.2d 1175, 1183 (3rd Cir. 1976) (recognizing that a criminal contempt fine can only be imposed in a criminal contempt proceeding conducted in accordance with the Criminal Code, the Federal Rules of Criminal Procedure as well as the constitutional provisions relevant to criminal trials). Indeed, no court, whether federal or state, has ever held that criminal fines may be imposed in civil proceedings.

The opinion of the Court of Appeals was based on a misreading of this Court's decisions. The Court of Appeals justified Chicago's attempt to impose criminal fines via a civil process (where proof is merely a preponderance) on the basis that "nothing in the Constitution prevents a state from relaxing the conventional safeguards of the criminal process in tandem with a lightening of the penalties." As support for this proposition, the court cited this Court's decisions in Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979) (holding that there is no right to counsel in trials involving petty criminal offenses), Blanton v. City of North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989) (holding that there is no right to a jury trial for petty criminal offenses), and Duncan v. Louisiana, 391 U.S. 145, 159-72, 88 S.Ct. 1444, 1452-1461, 20 L.Ed.2d 491 (1968) (holding that there is no right to a trial by jury in trials involving petty criminal offenses).

It is plain that the foregoing cases cannot plausibly be read to authorize a state to dismantle the entire criminal process and impose punishment on proof by a preponderance. Indeed, this Court has explicitly rejected such a reading of those cases. For example, in Hicks v. Feiock, 485 U.S. 624, 632 (1988), this Court stated: "We have recognized that certain specific constitutional protections, such as the right to trial by jury, are not applicable to those criminal contempts that can be classified as petty offenses, as is true of other petty crimes as well. This is not true, however, of the proposition that guilt must be proved beyond a reasonable doubt." See also Brown v. Mississippi,, 297 U.S. 278, 285-86 (1936).

According to the Court of Appeals, due process has no relation to traditional practice, but rather hinges on a comparison between the severity of the criminal penalties actually imposed and the severity of other unnamed civil penalties that the state could hypothetically impose. This new methodology for constitutional analysis finds numerous conflicts with this Court's decisions, the decisions of other Courts of Appeals, and previous decisions within the Seventh Circuit itself.

Contrary to a long line of this Court's decisions, the Court of Appeals failed to give due regard to the role of tradition and history in constitutional analysis. See, e.g., Kennedy v. Mendoza-Martinez, 372 U.S. 144, 169 (1963) (a study of history "is worth a volume of logic"). The Court of Appeals relegated the traditional practice of imposing criminal fines in criminal proceedings to the status of "some weird ratchet" that "decree[s] once a criminal penalty always a criminal penalty."

In doing so, the Court of Appeals departed from a long line of this Court's cases which hold that "the basic procedural protections of the common law have been regarded as fundamental." Honda Motor Co., Ltd. v. Oberg, 114 S.Ct. 2331, 2340 (1994) Consequently, a state's "abrogation of a well-established common law protection against arbitrary

deprivations of property raises a presumption that its procedures violate the Due Process Clause." Honda Motor Co., 114 S.Ct. at 2339.

The Court of Appeals failed to recognize what "this Court has stated from its first Due Process cases, traditional practice provides a touchstone for constitutional analysis." Honda Motor Co., 114 S.Ct. at 2339-40 (citing Murray v. Hoboken Land & Improvement Co., 18 How. 272, 15 L.Ed. 372 (1856); Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); Brown v. Mississippi, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936); In re Winship, 397 U.S. 358, 361, 90 S.Ct. 1068, 1071, 25 L.Ed.2d 368 (1970); Burnham v. Superior Court of Cal., County of Marin, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990); Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991)). For this reason, "[w]hen the absent procedures would have provided protection against arbitrary and inaccurate adjudication, this Court has not hesitated to find the proceedings violative of Due Process." Id.

In the instant matter, the Court of Appeals recognized that the criminal fines at issue were historically imposed in a criminal proceeding, but held that "[t]he traditional system, mindlessly assimilating a parking ticket to an indictment for murder, was archaic and ineffective." Van Harken v. City of Chicago, 103 F.3d 1346, 1351 (7th Cir. 1997). The Court of Appeals relegated long-standing tradition to the status of "some weird ratchet." Id. at 1350.

Instead of using traditional practice as the touchstone of due process, the Court of Appeals announced a new method of constitutional analysis. This new methodology focuses the inquiry on a comparison between the severity of the criminal penalties actually imposed and the severity of other unnamed civil penalties that the State could hypothetically impose. This new methodology finds conflicts with this Court's rulings, the Second Circuit's rulings, and previous rulings within the Seventh Circuit

itself.

As an initial matter, it is guess work to determine the new constitutional doctrine announced by the Court of Appeals because the court failed to articulate what "incontestably civil penalties" formed the basis of its comparison. Uncertainty notwithstanding, it was clear error for the Court of Appeals to rule that a citizen's right to criminal due process depends upon a comparison between the punishment actually imposed and civil sanctions that hypothetically could be imposed.

This Court has rejected the notion that the severity of criminal fines can even be compared to forced confinement. In Mayer v. City of Chicago, 404 U.S. 189 (1971), where the accused was fined $500 for two ordinance violations, this Court recognized that "[t]he practical effects of conviction of even petty offenses of the kind involved here are not to be minimized. A fine may bear as heavily on an indigent accused as forced confinement." Id. at 197. In Justice Powell's concurring opinion in Argersinger v. Hamlin, 407 U.S. 25 (1972), which Chief Justice Rehnquist signed onto, it was recognized that "[s]erious consequences also may result from convictions not punishable by imprisonment. Stigma may attach to a drunken-driving conviction or a hit-and-run escapade. Losing one's driver's license is more serious for some individuals than a brief stay in jail." Id. at 48. As these cases make clear, a citizen's due process rights have never depended upon a comparison between the criminal sanction actually imposed and other unnamed "civil sanctions" that the state could hypothetically impose.

The Second Circuit has also rejected the premise of the Seventh Circuit that the severity of fines can be compared with the severity of other sanctions: "It is simply not possible to compare a fine with a prison term and determine with any degree of accuracy which is the more severe." United States v. Barash, 428 F.2d 328, 332 (2d Cir. 1970). The Seventh Circuit itself previously concluded that attempting to compare the severity of

various forms of punishment is wholly impractical: "Indeed, in pragmatic terms, any attempt to compare one kind of punishment with another and to pronounce one more or less severe than another . . . is wholly impractical." United States v. Mathis, 579 F.2d 415, 419 (7th Cir. 1978). Thus, the new constitutional doctrine announced by the Court of Appeals in this case reflects a departure from its own precedent.

Even accepting the premise of the Court of Appeals that a fine can be compared to other sanctions, its ruling conflicts with this Court's decisions in Hicks v. Feiock, 485 U.S. 624 (1988) and Penfield Co. v. SEC, 330 U.S. 585 (1947). The unsupported assumption of the Court of Appeals was that if a civil sanction exists which is more severe than a criminal fine, then there is no reason to impose the safeguards of criminal procedure. That assumption is in fact explicitly contradicted by this Court's decisions. This Court has held that after a civil hearing a defendant "could be given a conditional term of imprisonment but could not be made to pay 'a flat, unconditional fine of $50.00.'" Hicks v. Feiock, 485 U.S. 624, 633 (1988); see also Penfield Co. v. SEC, 330 U.S. 585, 588 (1947). The assumption of the Seventh Circuit that the existence of a more "severe" civil sanction allows the state to dispense with the entire criminal process represents nothing short of a repudiation of Hicks and Penfield.

Finally, the Court of Appeals clearly erred when it made the sweeping conclusion that "nothing in the due process clause forbids the reclassification of criminal offenses as civil violations." Van Harken v. City of Chicago, 103 F.3d 1246, 1350 (7th Cir. 1997) As the "important point" in the Court of Appeals' disposition, that conclusion directly contradicts a long line of cases. In the seminal case on this issue, Kennedy v. Mendoza-Martinez, 372 U.S. 144, 167 (1963), this Court held that if the sanction that a law imposes is punishment and the procedural safeguards required as incidents of a criminal prosecution are lacking, the court "need go no further"; the law is

unconstitutional. See also Boyd v. United States, 116 U.S. 616, 635 (1886) (refusing to allow the government to label an action "civil" which in substance and effect is criminal, and thereby take from the proceeding its criminal aspect and deprive the accused of his constitutional rights and immunities.)

The ruling of the Court of Appeals simply overrules almost every non-death penalty criminal due process case that this Court has decided. The holding of the Court of Appeals allows a State to dismantle the entire criminal apparatus based on a facile comparison to certain unnamed "civil penalties." Given that this Court has recognized that imprisonment itself may be a civil penalty which may be imposed in a civil proceeding (see, e.g., Hicks v. Feiock, 485 U.S. 624, 631-32 (1988)), the holding of the Court of Appeals has no limit whatsoever. This sort of constitutional generalization represents clear error which ought to be reviewed by this Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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APPENDIX

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Ada VAN HARKEN, et al., Plaintiffs-Appellants,
v.
CITY OF CHICAGO, Defendant-Appellee.

No. 95-3997.

United States Court of Appeals,
Seventh Circuit.

Argued Oct. 28, 1996.

Decided Jan. 6, 1997.

Before POSNER, Chief Judge, and EASTERBROOK and RIPPLE, Circuit Judges.

POSNER, Chief Judge.

[1] In 1990 the City of Chicago adopted a new system for the adjudication of parking violations. Chi. Munic. Code ch. 9-100. That system is challenged in this class action on behalf of persons who, either having been adjudged liable for a parking violation in contested proceedings under the new procedures and paid their fines or having received a parking ticket and still having time to contest it, claim that the new procedures violate the due process clauses of the United States and Illinois constitutions. The district judge dismissed the suit for failure to state a claim under either constitution. 906 F.Supp. 1182 (N.D.Ill.1995). The City argues that we cannot even reach the merits of the appeal because the suit is a collateral attack on the judgments in the plaintiffs' parking cases, and thus violates the Rooker-Feldman doctrine, on which see, e.g., Young v. Murphy, 90 F.3d 1225, 1230 (7th Cir.1996). The argument depends upon the undefended assumption that the doctrine applies to administrative as well as judicial decisions. All the circuits to have considered the assumption in a published opinion have rejected it, Narey v. Dean, 32 F.3d 1521, 1525-26

(11th Cir.1994); ***1349** Scott v. Flowers, 910 F.2d 201, 208 (5th Cir.1990); Ivy Club v. Edwards, 943 F.2d 270, 284 (3d Cir.1991), and we are not disposed to create an inter-circuit conflict on the question.

The basis of the Rooker-Feldman doctrine (see Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 103 S.Ct. 1303, 1311-12, 75 L.Ed.2d 206 (1983)) is that only the U.S. Supreme Court has been authorized by Congress to review decisions by state courts. 28 U.S.C. § 1257. The only decisions reviewable under this statute are final decisions "by the highest court of a State in which a decision could be had," 28 U.S.C. § 1257(a), but of course it does not follow that decisions by a lower state court are reviewable in federal courts. No statute authorizes such review, and it would be grotesque to allow a disappointed state court litigant to pursue his appeal in federal rather than state court. Worldwide Church of God v. McNair, 805 F.2d 888, 893 n. 3 (9th Cir.1986); Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1142-43 (2d Cir.1986), rev'd on other grounds, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987); Hale v. Harney, 786 F.2d 688, 691 (5th Cir.1986). It might appear by parity of reasoning that a party to a state administrative proceeding is not authorized to bypass the appellate remedy that the state has provided in its own courts by filing an action in federal district court instead. Countless cases, however, allow people who lose in state administrative proceedings to seek relief in federal district court under civil rights legislation such as 42 U.S.C. § 1983; and Patsy v. Board of Regents, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982), expressly rejected a requirement of exhausting administrative remedies before suing under that section. We cannot believe that these cases were decided as they were simply because the defendants failed to argue Rooker- Feldman. If the Rooker-Feldman doctrine is to be extended to administrative judgments, it will have to be done by the Court that created it.

[2] The City's Rooker-Feldman argument fails on a second ground as well, though here we must be careful to distinguish between the different kinds of relief sought by the suit. Centifanti v. Nix, 865 F.2d 1422, 1429 (3d Cir.1989). Insofar as the plaintiffs merely seek a declaration that the procedures under which the parking charges against them were, or in the case of those members of the class whose cases have not yet been heard will be, adjudicated are constitutionally inadequate, they are not barred by Rooker- Feldman because they are not challenging the judgment in any parking case. Buckley v. Illinois Judicial Inquiry Board, 997 F.2d 224, 227 (7th Cir.1993) see also Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir.1995); Dubinka v. Judges of Superior Court, 23 F.3d 218, 222 (9th Cir.1994); Centifanti v. Nix, supra, 865 F.2d at 1429. But insofar as they are seeking refunds of the parking fines imposed upon them, they are barred. The Feldman decision illustrates the distinction. It allowed the plaintiffs in that case to challenge the constitutionality of the rule under which they had been denied admission to the bar, 460 U.S. at 487-88, 103 S.Ct. at 1317-18, while refusing to allow them to challenge the denial itself. If they prevailed on their challenge to the rule, they might or might not be able to get a new hearing on the denial of their applications for admission, and to that extent the Rooker-Feldman doctrine does not prevent a form of collateral attack upon--or, better perhaps, an oblique swipe at--a state court judgment by a suit brought in a federal district court. Our case is the same so far as the declaratory relief sought by the plaintiffs is concerned, and no more is necessary to support jurisdiction.

We come then to the merits. In Illinois before 1987 and in a majority of the states to this day, parking violations were and are technically criminal violations even when the maximum punishment is a modest fine; and the violator was and in the other states is entitled to the usual safeguards of the criminal process. A number of states, however, have decriminalized parking violations and substituted a civil penalty system. See, e.g., Gardner v. City of Columbus, 841 F.2d 1272, 1274 (6th Cir.1988);

1992 Cal.Adv.Legis.Serv. ch. 1244, § 1 (Deering). (Gardner upheld Ohio's system against a challenge similar to that mounted by the plaintiffs in the present case.) Illinois joined these ***1350** states in 1987 by authorizing its municipalities to adopt such systems if they wanted. 625 ILCS para. 5/11-208.3. Chicago took up the invitation, as we said, in 1990. Under the system, the parking ticket the police officer writes is prima facie evidence of a violation. The owner of the car can either pay the fine written on the ticket (which cannot exceed $100) or challenge the ticket either in writing or in person. These challenges are adjudicated not by regular judges or other employees of the City or State but by private lawyers whom the City hires as part-time hearing officers. The police officer who wrote the ticket is not expected to participate in the hearing, other than through the ticket itself, which is treated as the equivalent of an affidavit. Ordinarily, the only live participant in the hearing besides the hearing officer will be the respondent, that is, the recipient of the ticket. A manual that the City has issued to its hearing officers directs them to conduct a searching cross-examination of the respondent. The hearing officer can subpoena witnesses (including, of course, the police officer who wrote the ticket), and can consider any documentary evidence (photographs, for example) submitted by the respondent. The hearing is tape recorded. If the hearing officer finds a violation and imposes a fine, the respondent can seek judicial review in the Circuit Court of Cook County upon the payment of the normal fee for filing a case in that court, which is $200.

[3][4] The plaintiffs make two main arguments for why the City's new system for the adjudication of parking violations denies due process. The first is that because such violations have traditionally been treated as criminal offenses, though of the lowest order--below misdemeanors--the state may not reclassify them as civil, and reduce the procedural safeguards required in criminal proceedings, unless it reduces the sanction. Before the new ordinance, the appellants tell us, the maximum fine for a parking violation was $100 and was a criminal punishment; under

the new ordinance, the maximum fine is still $100, so it must be a criminal punishment still, and the violator must therefore be entitled to the full panoply of procedural safeguards. Both steps in this argument are wrong. The first also rests on an erroneous factual premise. The maximum fine before the new ordinance was not $100 but $200, People ex rel. Daley v. Datacom Systems Corp., 146 Ill.2d 1, 165 Ill.Dec. 655, 585 N.E.2d 51, 67-68 (1991), although apparently no fine above $100 was imposed. General Order No. 7 of Circuit Court of Cook County, reprinted in Sullivan's Law Directory 687c (1995). That is a detail. The important point is that nothing in the due process clause forbids the reclassification of criminal offenses as civil violations. Of course the state would not be permitted by reclassifying murder as a civil violation to impose the death penalty without the procedural protections that the courts have interpreted the Constitution as requiring in capital cases; but the reason would be the severity of the punishment. A criminal fine of $100 is much less severe than many incontestable civil penalties, so if the state decides to convert it to a civil penalty there is no reason to impose the safeguards of criminal procedure. It is extraordinarily common, moreover, for a statute to carry both civil and criminal penalties. If the legislature repeals the criminal penalties, does this mean that the civil penalties, which remain, are now criminal, because they are replacing criminal penalties in those cases in which, before the repeal, the criminal rather than the civil penalty would have been imposed? The implication of the plaintiffs' argument is that the answer is "yes," which shows how strange the argument is. And even if, as we do not for a moment believe, some weird ratchet decreed that once a criminal penalty, always a criminal penalty, nothing in the Constitution prevents a state from relaxing the conventional safeguards of the criminal process in tandem with a lightening of the penalties. Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979); Blanton v. City of North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989); Duncan v. Louisiana, 391 U.S. 145, 159-72, 88 S.Ct. 1444, 1452-1461, 20 L.Ed.2d 491 (1968); United States v. Soderna, 82 F.3d 1370, ***1351** 1377-79 (7th Cir.1996); United

States v. Paternostro, 966 F.2d 907, 913 (5th Cir.1992).

The due process clause is not a straitjacket, preventing state governments from experimenting with more efficient methods of delivering governmental services, in this case the provision of a municipal road system. The traditional system, mindlessly assimilating a parking ticket to an indictment for murder, was archaic and ineffective. See People ex rel. Daley v. Datacom Systems Corp., supra, 165 Ill.Dec. at 658, 585 N.E.2d at 54. Its age did not entrench it against reform.

[5][6] The plaintiffs' second argument is that the procedures prescribed by the new ordinance are inadequate even for civil proceedings. The test for due process in the sense of procedural minima, as set forth in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976), requires a comparison of the costs and benefits of whatever procedure the plaintiff contends is required. The use of cost-benefit analysis to determine due process is not to every constitutional scholar's or judge's taste, but it is the analysis prescribed by the Supreme Court and followed by the lower courts including our own. E.g., United States v. James Daniel Good Real Property, 510 U.S. 43, 53, 114 S.Ct. 492, 500-01, 126 L.Ed.2d 490 (1993); Zinermon v. Burch, 494 U.S. 113, 127, 110 S.Ct. 975, 984, 108 L.Ed.2d 100 (1990); McCollum v. Miller, 695 F.2d 1044, 1048 (7th Cir.1982); Sutton v. City of Milwaukee, 672 F.2d 644 (7th Cir.1982); Chemical Waste Management, Inc. v. EPA, 873 F.2d 1477, 1483 (D.C.Cir.1989); Artway v. Attorney General, 81 F.3d 1235, 1251 (3d Cir.1996). It has become orthodox and we are bound to follow it; nor is it challenged by the plaintiffs.

The costs of procedural safeguards are fairly straightforward, which is not to say easy to quantify. For example, the cost of requiring the police officer who writes the ticket to appear in person at every hearing at which the ticket is challenged--one of the procedural safeguards that the plaintiffs in this case claim is required by the due process clause--depends on the number and

length of hearings, the average time the police officer requires to get to and from the hearing, the reduction in his productivity from the interruption of his normal workday that attendance at such hearings requires, and the expense to the City of hiring additional policemen. We were told at argument without contradiction that the City issues 4 million parking tickets a year, of which 5 percent are challenged (200,000), a third of those in person rather than by mail and thus requiring an oral hearing (67,000). If the ticketing officer were required to attend, the number of hearings requested would undoubtedly be higher, because respondents would think it likely that the officer wouldn't show up--a frequent occurrence at hearings on moving violations. Suppose the number of hearings would be double what it is under the challenged procedures (that is, would be 134,000), but the police would show up at only half, putting us back to 67,000; and suppose that a hearing at which a police officer showed up cost him on average 2 hours away from his other work. Then this procedural safeguard for which the plaintiffs are contending would cost the City 134,000 police hours a year, the equivalent of 67 full-time police officers at 2,000 hours a year per officer. In addition, more hearing officers would be required, at some additional cost to the City, because each hearing would be longer as a result of the presence of another live witness. And all these are simply the monetary costs. Acquittals of violators due solely to the ticketing officer's failure to appear would undermine the deterrent efficacy of the parking laws and deprive the City of revenues to which it was entitled as a matter of substantive justice.

The benefits of a procedural safeguard are even trickier to estimate than the costs. The benefits depend on the harm that the safeguard will avert in cases in which it prevents an erroneous result and the likelihood that it will prevent an erroneous result. We know the harm here to the innocent car owner found "guilty" and forced to pay a fine: it is the fine, and it can be anywhere from $10 to $100, for an average of $55. We must ask how likely it is that error would be averted if the ticketing officer were present at the hearing and therefore subject to cross-examination.

***1352** Suppose that in his absence the probability of an erroneous determination that the respondent really did commit a parking violation is 5 percent, and the officer's presence would cut that probability in half, to 2.5 percent. Then the average saving to the innocent respondent from this additional procedural safeguard would be only $1.38 ($55 x .025)--a trivial amount.

[7] These calculations are inexact, to say the least; but they help to show, what is pretty obvious without them, that the benefits of requiring the police officer to appear at every hearing are unlikely to exceed the costs. Assuming that oral testimony is more persuasive in general than written, the only basis on which the plaintiffs can complain about the police officer's absence is that it prevents them from cross-examining him. In short, they are claiming that they have a right of confrontation. There is no absolute right of confrontation in civil cases. See Richardson v. Perales, 402 U.S. 389, 402, 407, 91 S.Ct. 1420, 1427-28, 1430, 28 L.Ed.2d 842 (1971). In particular cases, live testimony and cross-examination might be so important as to be required by due process, although the principal case so holding--Goldberg v. Kelly, 397 U.S. 254, 268, 90 S.Ct. 1011, 1020-21, 25 L.Ed.2d 287 (1970)--may not have much life left after Mathews v. Eldridge, supra, 424 U.S. at 334- 35, 96 S.Ct. at 902-03; cf. Cholewin v. City of Evanston, 899 F.2d 687, 689-90 (7th Cir.1990). Goldberg granted a right of confrontation to persons denied welfare benefits; Mathews withdrew it for persons denied disability benefits. The basis for distinction was the hardship to persons taken off welfare, and of course it has no counterpart here. Moreover, the ordinance empowers the hearing officer to subpoena witnesses. That provides an adequate safety valve for those cases, if any (there may be none), in which fair consideration of the respondent's defense would require, as a constitutional imperative, the recognition of a right of confrontation.

[8] This discussion disposes not only of the plaintiffs' objection to dispensing with the attendance of the police officer but also of

their objection to the hearing officers' being instructed to cross-examine respondents. As the only live witness at the hearing the respondent has a natural advantage over the City, whose only witness, the police officer, is not present to contradict whatever far-fetched tale the respondent thinks up. A searching examination of the respondent is a legitimate counter to this advantage.

This point casts a retrospective aura of unreality over the plaintiffs' complaint about the absence of the ticketing officer. In some cases his absence will hurt the respondent by preventing cross-examination, but in most it will help the respondent by giving him the last word. No net disadvantage to respondents is plausible. It is apparent that substituting the ticket for the officer was designed not to make it more difficult for the respondent to avoid a finding of liability, but merely to save the expense of tying up police officers' time in hearings when they should be out on the street protecting the public safety.

[9] The plaintiffs also object to the fact that the hearing officers are hired by, and can be fired at will by, the City's Director of Revenue, who may want to maximize the City's "take" from parking tickets. Actually, this cannot be assumed. The Director of Revenue is appointed by and serves at the pleasure of the Mayor, whose concerns transcend the collection of parking fines. The enforcement of the parking laws is not merely a program for raising revenues; it is also designed to facilitate traffic flow. Compliance, which produces no revenue, may be as important to the City as noncompliance, which produces revenue but also clogs the streets. Compliance is not reliably promoted by absence of fair adjudication of contested parking violations; indeed, if parking fines are assessed randomly, you might as well park illegally, as you are as likely to be fined if you park legally. And drivers are voters, and so cannot be treated with an utter disregard for their predictable indignation at being fined for parking violations that they did not commit.

So it is possible that the plaintiffs are being too cynical about the Director of Revenue. But even if they are not, we do not think that the adjudicative reliability of the hearing officers is fatally compromised by ***1353** the manner of their appointment and by their lack of secure tenure. The officers are not paid by the number of hearings that they resolve against the respondent; they are not paid any portion of the fines they impose, as in Tumey v. Ohio, 273 U.S. 510, 520, 47 S.Ct. 437, 440, 71 L.Ed. 749 (1927); they have no quota of fines that they must impose on pain of losing their jobs or having their pay reduced; and they have no other financial stake in the outcome of the cases that they adjudicate, as in Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 821-25, 106 S.Ct. 1580, 1585-87, 89 L.Ed.2d 823 (1986). If their very indirect, very tenuous stake (a fear that if a hearing officer lets off too many alleged parking violators, the Director of Revenue may get angry and fire him) were enough to disqualify them on constitutional grounds, elected judges, who face significant pressure from the electorate to be "tough" on crime, would be disqualified from presiding at criminal trials, especially in capital cases. They are not. Bracy v. Gramley, 81 F.3d 684, 689 (7th Cir.1996).

[10] The plaintiffs' best case, but not good enough, held that due process prevented a mayor from wearing a second hat as a judge administering his village's traffic and other ordinances providing for fines and forfeitures. Ward v. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972). The mayor did not have a direct pecuniary stake in the decisions of the mayor's court, but his indirect stake was great. Between a third and a half of the village's total revenues came from the fines and forfeitures decreed by the court, id. at 58, 93 S.Ct. at 82, so that failure to maintain a stern policy of conviction might make it impossible for him to balance the village's budget. Nothing like that is suggested here, and there is the additional difference that the hearing officers have no municipal governmental responsibilities. If the Director of Revenue or his subordinates were hearing these parking cases, the plaintiffs would have a stronger case. Slightly

stronger, at any rate, for the mere fact that an administrative or adjudicative body derives a financial benefit from fines or penalties that it imposes is not in general a violation of due process, Dugan v. Ohio, 277 U.S. 61, 48 S.Ct. 439, 72 L.Ed. 784 (1928); Commonwealth of the Northern Mariana Islands v. Kaipat, 94 F.3d 574, 580-81 (9th Cir.1996); Doolin Security Savings Bank v. FDIC, 53 F.3d 1395, 1405-07 (4th Cir.1995), though in exceptional cases, illustrated by Ward and by United Church of the Medical Center v. Medical Center Comm'n, 689 F.2d 693, 699-700 (7th Cir.1982), it may be.

The hearing officers are not, it is true, as well insulated from the pressures of their political superiors as administrative law judges. But they are almost certainly cheaper (they receive $35 an hour, with no benefits, and are paid only when they are working), a relevant consideration under the cost-benefit formula of the Mathews case; and we must not forget that the maximum penalty that they are empowered to impose is only $100. The less that is at stake, other things being equal, the less process is due; that is the teaching of Mathews. With the benefits of stricter procedures as slight as our earlier example suggested they are, the costs that would be incurred in maintaining a corps of "real" judges justify the City's preference for a cheaper alternative.

We conclude that the City's procedures for dealing with parking violations satisfy the requirements of due process. But this conclusion owes nothing to the respondent's appellate remedy. An appeal that, quite apart from the time of the appellant and any attorney's fee, costs more to file than the maximum gain that the appeal can yield the appellant is an illusory remedy. We are unimpressed by the City's argument that it cannot be blamed because it does not fix the fee for filing a case in the circuit court (a state court) and because it lacks statutory authorization to create its own appellate remedy for the parking violators. The first point is irrelevant, because one branch of state government, as the City is for purposes of the Fourteenth Amendment, cannot justify a denial of due process by pointing to the actions of

another branch (and the state legislature). See Lovell v. Griffin, 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949 (1938). The second is incorrect, since there is nothing to prevent the City from establishing within the Bureau of Parking Enforcement ***1354** a tier of appellate hearing officers.

[11][12] We have thus far discussed only the plaintiffs' federal constitutional claim. They also have a state claim, a pendent or as it is now called a supplemental state claim, 28 U.S.C. § 1367, since its only federal jurisdictional handle is the federal claim. The general rule is that when as here the federal claim drops out before trial (here way before trial), the federal district court should relinquish jurisdiction over the supplemental claim. E.g., Boyce v. Fernandes, 77 F.3d 946, 951 (7th Cir.1996); Wright v. Associated Ins. Cos., 29 F.3d 1244, 1251 (7th Cir.1994). The district judge did not do this, his ground being that the due process clause of the Illinois constitution is a mirror image of the federal due process clause. Of course, this in itself is an interpretation of state law, and the general rule that we have cited is designed to minimize the occasions for federal judges to opine on matters of state law. If, however, an interpretation of state law that knocks out the plaintiff's state claim is obviously correct, the federal judge should put the plaintiff out of his misery then and there, rather than burdening the state courts with a frivolous case. E.g., Boyce v. Fernandes, supra, 77 F.3d at 951; Bowman v. City of Franklin, 980 F.2d 1104, 1109-10 (7th Cir.1992). The district judge evidently thought that this case was within this "no brainer" exception to the duty to relinquish federal jurisdiction over the supplemental claim when the main claim drops out before trial.

[13] We reaffirm the propriety of the exception; it is important to judicial economy, which is at the heart of the supplemental jurisdiction. And we acknowledge the broad discretion of district judges in making judgments concerning the retention of supplemental claims. But this case, especially because the supplemental claim is based on a state constitution, does not fall within the exception. The Supreme Court of Illinois has held that

the due process clause of the Illinois constitution is not coterminous with that of the federal constitution. In both People v. McCauley, 163 Ill.2d 414, 206 Ill.Dec. 671, 678-87, 645 N.E.2d 923, 930-39 (1994), and Rollins v. Ellwood, 141 Ill.2d 244, 152 Ill.Dec. 384, 396-401, 565 N.E.2d 1302, 1314-19 (1990), the court found that the federal due process clause was not violated but the Illinois due process clause was. From cases cited by the City dealing with specific aspects of due process pertinent to this case, such as when a proceeding is "really" criminal and when administrative decision-makers must be disqualified for bias, Rehg v. Illinois Dept. of Revenue, 152 Ill.2d 504, 178 Ill.Dec. 731, 736-39, 605 N.E.2d 525, 530-33 (1992) (overruled by Wilson v. Department of Revenue, 169 Ill.2d 306, 214 Ill.Dec. 849, 662 N.E.2d 415 (1996), on grounds not relevant to this particular question); E & E Hauling, Inc. v. Pollution Control Board, 107 Ill.2d 33, 89 Ill.Dec. 821, 824- 25, 481 N.E.2d 664, 667-68 (1985), it appears unlikely that the Illinois courts would find a denial of Illinois due process in Chicago's parking ordinance, but it is not so unlikely that the plaintiffs should be denied an opportunity to try to persuade them.

[14] It is true that they have not as yet presented a convincing argument that the Illinois courts would reach a different result by interpretation of the state constitution than we reach by interpretation of the federal. But that was not their burden. The presumption is in favor of dismissing the state claim without an examination of the merits, when the federal claim falls out before trial, especially where as in this case there has been almost no discovery or other pretrial preparation. E.g., Graehling v. Village of Lombard, 58 F.3d 295, 299 (7th Cir.1995). We have explained that the presumption is rebuttable. But it is not to be ignored, and it is strengthened when the state claim is based on the state constitution--imagine if a federal court were to hold that although Chicago's new system of adjudicating parking violations does not violate the federal constitution, it violates the state constitution. The district judge should not have challenged the plaintiffs to make a convincing state constitutional argument to him. Ball v.

Renner, 54 F.3d 664, 669 (10th Cir.1995). The judgment of the district court is therefore modified to make the dismissal of the ***1355** plaintiffs' state claims without prejudice to their being refiled in state court.

MODIFIED AND AFFIRMED.

Ada VAN HARKEN, et al., Plaintiffs,
v.
CITY OF CHICAGO, Defendant.

No. 94 C 6502.

United States District Court,
N.D. Illinois,
Eastern Division.

Nov. 6, 1995.

Reported at: 906 F.Supp. 1182

MEMORANDUM OPINION AND ORDER

SHADUR, Senior District Judge.

Ada Van Harken, Alex French and Michael Bennett, both individually and as class ***1185** representatives, have brought suit against the City of Chicago ("City"), charging that City's Administrative Adjudication of Parking Violations Ordinance (the "Ordinance," Chicago Municipal Code of 1990 [FN1] §§ 9-100-010 et seq.) violates the Due Process Clauses of both the United States and Illinois Constitutions. Plaintiffs assert their federal claims under 42 U.S.C. § 1983 ("Section 1983") and their state law claims under the supplemental jurisdiction provision of 28 U.S.C. § 1367(a).

> FN1. All further references to the 1990 version of the Chicago Municipal Code will take the form "Code §--." References to earlier versions of the Code will take the form "-- [indicating the year] Code §--."

City has moved to dismiss all of plaintiffs' claims under Fed.R.Civ.P. ("Rule") 12(b)(6), and the motion is fully briefed. For the reasons stated in this memorandum opinion and order,

the plaintiff class (defined somewhat more narrowly than in plaintiffs' Second Amended Complaint) is certified, and City's motion is granted in full. All of plaintiffs' claims and hence this action are dismissed with prejudice. [FN2]

> FN2. In the course of briefing both parties have submitted matters outside of the pleadings, which (with limited exceptions, such as this Court's ability to take judicial notice of certain matters) is inappropriate under Rule 12(b)(6). Rule 12(b) gives the option of either (1) considering the extraneous materials and treating the motion as one for summary judgment under Rule 56 or (2) excluding the materials. Because it is clear from the face of the Complaint that plaintiffs would not be able to obtain relief under any related set of facts, it is unnecessary to consider the extraneous materials with one possible exception: the form of contract by which City hires its hearing officers, which is really incontrovertible and is merely confirmatory of the legal proposition (established independently of the contract) that no due process violation is involved because of any alleged financial interest on the part of the hearing officers. This motion is analyzed under familiar Rule 12(b)(6) principles.

Facts

Before 1990 violations of City's parking regulations were adjudicated in the Municipal Court of Chicago (1984 Code § 27-365(a)). In 1990 City revamped that system, moving the adjudicative function out of the Municipal Court and into a newly created administrative framework within City's Department of Revenue (Code § 2-80-040(m)). That move was made pursuant to, and the new administrative procedure was modeled on, Illinois Vehicle Code § 11-208.3 (625 ILCS 5/11-208.3).

Under the administrative procedure created by the Ordinance, when a person with authority to enforce the parking ordinance

[FN3] observes a violation of any parking regulation, the observer must either serve the notice of violation on the operator of the vehicle (if present) or affix the notice to the vehicle in a conspicuous place (Code § 9-100-030(b)). In addition to other required information. [FN4] the notice informs the ticket recipient that within seven days from the date of the notice the ticket recipient may (Code § 9-100- 050(a)):

> FN3. That includes "any police officer, traffic control aide, other designated member of the police department, parking enforcement aide or other person designated by the city parking administrator ..." (Code § 9- 100-030(b)).

> FN4. Code § 9-100-030(b) requires that the notice include the identification number of the person issuing the notice, the parking regulation allegedly violated, the make and state registration number of the vehicle and the place, date, time and nature of the alleged violation. Code 9-100-050(a) also requires that the notice include the applicable fine, the monetary penalty that will be assessed for late payment, a warning that vehicle immobilization and driver's license suspension may be imposed if fines or penalties are not paid in full, and notice that payment of the fine will operate as final disposition. Finally, the issuer must certify the correctness of the information on the notice by signing his or her name (Code § 9-100-030(b)).

(1) pay the indicated fine; or, in the manner indicated in the notice, either (2) submit the materials set forth in Section 9-100-070 to obtain an adjudication by mail; or (3) request an administrative hearing as set forth in Section 9-100-080 to contest the charged violation.

If the ticket recipient fails to choose any of those three options, a second notice of violation is sent (Code § 9-100-050(d)). Once again the ticket recipient has the same three options (id.). If the ticket recipient fails to choose any of the options within 14 days

after receiving the second notice, a determination ***1186** of liability will be entered in the amount of the fine indicated on the notice (id.).

Some common elements are shared by the adjudication-by-mail and administrative-hearing options. First, each is conducted by a "hearing officer appointed by the city parking administrator" (Code §§ 9-100-070(a) and 9-100- 080(a)). Second, the standard and burden of proof are the same (Code §§ 9-100- 070(c) and 9-100-080(e)):

> No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a parking violation notice, or a copy thereof, issued in accordance with Section 9-100-030 shall be prima facie evidence of the correctness of the facts specified therein.

Finally, the ticket recipient is "limited to one or more of the following grounds" for challenging the ticket (Code § 9-100-060):

> (1) That the respondent was not the owner or lessee of the cited vehicle at the time of the violation;
>
> (2) That the cited vehicle or its state registration plates were stolen at the time of the violation;
>
> (3) That the relevant signs prohibiting or restricting parking were missing or obscured;
>
> (4) That the relevant parking meter was inoperable or malfunctioned through no fault of the respondent;
>
> (5) That the facts alleged in the parking violation notice are inconsistent or do not support a finding that the specified regulation was violation [sic].

Under the adjudication-by-mail option, the ticket recipient may provide documentary evidence that rebuts the charge and a written statement setting forth the facts relevant to establishing a defense (Code § 9-100-070(b)). In an administrative hearing the ticket recipient may appear pro se or may be represented by an attorney (Code § 9-100-080(b)), formal rules of evidence do not apply (Code § 9-100-080(c)) and the hearing officer may issue subpoenas to secure the attendance and testimony of witnesses

(Code § 9-100-080(d)).

After considering the materials submitted by mail, or after the administrative hearing takes place, the hearing officer enters a determination of no liability or of liability in the amount of the fine. That determination becomes a final judgment for purposes of the Administrative Review Law of Illinois (Code §§ 9-100-070(d) and 9-100-090(a)).

Class Certification

[1] Rule 23(c)(1) mandates that a district court determine whether a class should be certified "as soon as practicable" after the commencement of the action. Whatever imprecision is inherent in the use of that phrase, it is clear that "as soon as practicable" means before a decision on the merits (Koch v. Stanard, 962 F.2d 605, 607 (7th Cir.1992) and cases cited there).

In this instance the waters have been muddied by City's prompt filing of a motion to dismiss plaintiffs' initial effort at a complaint, followed by delays (in the form of continuances while plaintiffs' counsel was recasting the allegations rather than briefing that original motion) until plaintiffs' counsel refashioned their pleading into its ultimate form as the Second Amended Complaint (referred to here, for convenience, simply as the "Complaint"). City then refocused its attack on that final pleading by a renewed motion to dismiss, and the parties have since devoted their attention--and a substantial amount of time--to the briefing process.

[2] Although the parties have thus concentrated on briefing the motion to dismiss, this Court wishes to remain faithful to the command of Rule 23(c)(1) as construed in Koch and other cases. This opinion therefore addresses the question whether this action "is to be maintained" as a class action (that, rather than the term "certification," is the actual locution of Rule 23(c)(1)) before it turns to City's Rule 12(b)(6) motion.

Plaintiffs propose to represent a class comprising (Complaint ¶ 4):

> the thousands of individuals, the exact number of which can be determined from the records of Defendant, who have received or may receive during the course of this litigation before final determination ***1187** from the City of Chicago, one or more of the following styled notices: Parking Violation Notices, Notice of Determination, and Notice of Final Determination.

Complaint ¶ 6 sweepingly asserts that the proposed class is viable under each of the subdivisions of Rule 23(b).

It is familiar territory that one or more members of a putative class may sue as representative parties on behalf of the entire class only if (Rule 23(a)):

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Those prerequisites are not seriously in question here: Surely the proposed class is sufficiently numerous (it would consist of "thousands of individuals"); constitutionality of the Ordinance is an issue of law common to all members of the proposed class; named plaintiffs Van Harken, French and Bennett assert claims that are typical of those of the class; and there is no indication that those named plaintiffs (and, as the case law gloss on the Rule also makes relevant, their counsel) would not adequately represent the class. Moreover, this is a classic candidate for a Rule 23(b)(2) class action, for:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

City's only argument as to the proposed class is that it should not include persons who have paid rather than contested their parking

tickets (City Mem. 8- 9). City frames its argument in terms of standing: It contends that persons who paid their tickets did not give City the opportunity to provide due process, and thus do not have standing to challenge the Ordinance.

[3] That argument is persuasive as to those persons who paid their tickets without availing themselves of an in-person or by-mail hearing. They cannot be heard to complain, because they have waived their opportunity to utilize the review procedures that they would now challenge. [FN5]

> FN5. This ruling is not at odds with Patsy v. Florida Bd. of Regents, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982), which held that there is no administrative or judicial exhaustion requirement under Section 1983. It is not that persons who paid their tickets had to exhaust any administrative remedies before mounting a constitutional attack on the Ordinance. Instead the point is that the persons who paid their tickets do not have a constitutional claim at all because they cannot claim the inadequacy of the process that they made no effort to bring into play.

Plaintiffs counter that the present situation is instead analogous to Atchison, T. & S.F. Ry. v. O'Connor, 223 U.S. 280, 286, 32 S.Ct. 216, 217, 56 L.Ed. 436 (1912), where Justice Holmes set out an exception when:

> the citizen is put at a serious disadvantage in the assertion of his legal, in this case of his constitutional, rights, ... justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side.

But plaintiffs omit the portion of that same opinion that specifies that the stated exception applies when "the party indicates by protest that he is yielding to what he cannot prevent ..." (id.). What was contemplated by Atchison is a case in which a person pays under protest and promptly brings suit challenging the state action. Nothing of the sort is alleged here, so that the ticketed

persons to whose inclusion City objects do not meet the terms of the Atchison exception.

Consequently, this Court certifies a class under Rule 23(b)(2) consisting of those persons:

1. who have received from the City of Chicago a Parking Violation Notice, a Notice of Determination or a Notice of Final Determination; and
2. who at the time of this action still have the right pursuant to the Code to challenge the parking violation via an in-person or by-mail hearing, or who have in the past challenged a parking violation via an in-person or by-mail hearing and, on a finding of liability, have ***1188** then paid the applicable fines and penalties.

As indicated by paragraph 2, the class expressly excludes persons who paid their parking tickets without requesting an in-person or by-mail hearing, as well as persons who were accorded a determination of parking violation liability pursuant to Code § 9-100-050(d).

With the threshold issue of class certification thus resolved, it is time to turn to the merits. That calls for an initial identification of the nature of plaintiffs' claims.

Plaintiffs' Claims

Plaintiffs advance multiple due process claims in their Complaint. [FN6] Thus they contend that parking violations are criminal in nature and that the administrative arrangement created by the Ordinance lacks the necessary criminal due process protections (Counts II and VII). Even if parking regulations are not found to be criminal, plaintiffs assert three procedural due process deficiencies in the administrative arrangement:

> FN6. Plaintiffs' numerous counts set out five federal and five state constitutional claims that mirror each other. For example, Count I asserts that the Ordinance violates

> the Due Process Clause of the United States Constitution because it does not provide for a fair and impartial adjudicator, while Count VI repeats the same claim in terms of the Due Process Clause of the Illinois Constitution. Nowhere in plaintiffs' Memorandum is there any discussion of how Illinois decisions support any of their state law claims. Instead they cite federal case law and discuss their claims purely in terms of the United States Constitution. City argues--quite predictably because a higher level of state due process protections could only be harmful to its case--that the Illinois Due Process Clause mirrors the federal Due Process Clause and therefore that the analysis under the federal Constitution is dispositive (City Mem. 4 n. 1). It is axiomatic that the Illinois Constitution must provide at least as much due process protection as the federal Constitution--although Illinois could, of course, provide a higher level of protection. Because both sides have effectively read the two constitutional guaranties as equivalent, this opinion will do the same.

1. It deprives ticket recipients of the right to a fair and impartial adjudicator (Counts I and VI).
2. It impermissibly causes persons who choose an adjudication by mail to waive their right to an in-person hearing (Counts III and VIII).
3. It unconstitutionally limits their ability to defend against the parking tickets (Counts V and X).

Finally, plaintiffs invoke the substantive component of the Due Process Clause to urge that the administrative procedure is skewed against ticket recipients and produces arbitrary and erroneous findings of liability (Counts IV and IX).

[4] For its part City argues that plaintiffs' Complaint fails to state a claim for which relief can be granted. That calls into play the familiar Rule 12(b)(6) test: whether, accepting all of plaintiffs' well-pleaded factual allegations as true and drawing all reasonable

inferences in their favor, relief could be granted if plaintiffs were able to prove facts consistent with the allegations in the Complaint (Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33, 81 L.Ed.2d 59 (1984)).

As a preliminary matter, however, City claims that even those plaintiffs who opted for an in-person or by-mail hearing lack standing to challenge the Ordinance because they failed to avail themselves of the opportunity for review available under the Ordinance. Specifically City argues that because plaintiffs did not appeal their claims in state court via the Illinois Administrative Review Law, [FN7] they should be foreclosed from arguing ***1189** that the Ordinance violates the Due Process Clause.

> FN7. Named plaintiffs utilized administrative review to different degrees:
> 1. Van Harken contested a parking ticket at an in-person hearing (via an attorney), but the hearing officer ruled that Van Harken had violated the statute (Complaint ¶ 29). She claims that she was "thwarted" in her efforts to obtain judicial review when she was unable to obtain a transcript of the administrative hearing.
> 2. French received a parking ticket for a meter violation, but apparently did not choose any of the three options on the ticket. Upon receiving a second notice, French attempted to request an adjudication by mail, but his appeal was untimely (Complaint ¶¶ 47-48).
> 3. Bennett received a ticket for parking illegally in a snow route and contested it by mail. He was found liable and did not seek judicial review (Complaint ¶ 55-56).
> None of the named plaintiffs has asserted that the administrative process was unconstitutional as applied to him or her. They raise only facial challenges.

[5][6] That position ignores the well-settled teaching of the Patsy case that there is no requirement of administrative or judicial exhaustion in Section 1983 cases. [FN8] As for the state law

claims, Illinois also teaches (e.g., Phillips v. Graham, 86 Ill.2d 274, 289, 56 Ill.Dec. 355, 361, 427 N.E.2d 550, 557 (1981)) that a plaintiff bringing a facial constitutional challenge need not first exhaust administrative remedies before seeking judicial relief. Consequently City's nonexhaustion argument is without merit.

> FN8. City's attempted reliance on Holstein v. City of Chicago, 29 F.3d 1145 (7th Cir.1994) for the proposition that exhaustion of administrative remedies is a prerequisite to a procedural due process claim is based on a misreading of that case. In Holstein the issue was whether a portion of City's ordinance that allowed for the towing of illegally parked cars without a predeprivation hearing was constitutional. In that context the Court of Appeals (id. at 1148) relied on Sutton v. City of Milwaukee, 672 F.2d 644 (7th Cir.1982) to hold that the Due Process Clause does not require a predeprivation hearing before illegally parked cars are towed. Thus under Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) the issue was whether an adequate state law postdeprivation remedy was available to the plaintiff there. Holstein is therefore inapposite: This is not a case where a predeprivation hearing is not feasible.

Criminal Due Process (Counts II and VII)

Complaint ¶ 90 states that the Ordinance violates the guaranties of the Fifth and Sixth Amendments: [FN9]

> FN9. Plaintiffs correctly label their claim as a due process violation, because it is the Fourteenth Amendment's Due Process Clause that makes the protections of the Bill of Rights applicable to the States. This opinion will, however, adhere to the conventional and convenient (though technically imprecise) practice of referring to the underlying Bill of Rights provisions (which of course are directly applicable only to the federal government) rather

than to the Fourteenth Amendment.

> The current system of administrative hearings denies the accused the right to be convicted on proof beyond a reasonable dout [sic], the right of confrontation of adverse witnesses, the right of compulsor [sic] process for obtaining witnesses in one's favor, and the right to a public trial.

That recital of rights belongs to criminal prosecutions--the Sixth Amendment says as much on its face, and the "beyond a reasonable doubt" requirement stemming from the Fifth Amendment also applies only to criminal charges (In re Winship, 397 U.S. 358, 361-64, 90 S.Ct. 1068, 1071-73, 25 L.Ed.2d 368 (1970)). Hence plaintiffs' criminal due process claim is meritless unless the parking regulations are indeed criminal in nature, for if not the Ordinance need not provide Fifth and Sixth Amendment protections.

Plaintiffs advance three lines of argument in this area:

1. Violations of City's parking regulations have historically been treated as criminal in nature.
2. Other states treat parking violations as criminal.
3. Sanctions imposed for violations of parking regulations are so punitive as to be a criminal penalty.

This opinion examines those contentions in turn.

Historical Treatment

Plaintiffs put much weight [FN10] on their analysis of how City has previously dealt with parking violations. Essentially plaintiffs argue that because the rules and schedule of fines under the current Ordinance are substantially the same as under earlier ordinances, and because in the past City has treated parking violations like criminal prosecutions with ticket recipients getting their day in court, the current Ordinance is unconstitutional because it now provides only an administrative adjudication that lacks the same formal due process protections.

> FN10. This is true literally as well as figuratively: 15 pages of plaintiffs' mammoth 76-page Memorandum are dedicated to a detailed presentation of how City has previously treated parking violations.

[7][8] There is a fundamental and obvious flaw in that position: It presumes that City has historically treated parking violations as criminal because it was forced to do so by the ***1190** United States Constitution. [FN11] No such assumption can be made. It is universally understood that while the United States Constitution provides a solid floor of constitutional protections, the States may build a ceiling of protection over that federal floor. Nothing more than speculation is available to suggest why City had previously provided persons accused of parking violations with the opportunity to challenge their tickets in Municipal Court. Perhaps City was voluntarily extending greater procedural rights to its citizens than those minimally required by the Constitution. Or perhaps City had not yet conceived of a more efficient method of handling parking violations, and so it used the Municipal Court because that mechanism was already in place. Either of those is a wholly plausible explanation.

> FN11. What is said in the text assumes only arguendo (but does not decide) that parking violations were treated as criminal prosecutions under previous ordinances.

Thus nothing in City's past handling is probative of what the Constitution demands. Plaintiffs' historical argument is therefore of no help in saving their claim.

Other States' Treatment

Plaintiffs Mem. 36 also says that Illinois and "[t]he overwhelming majority of other state courts have treated parking violations as criminal offenses." For the reasons just discussed, the long list of state cases that plaintiffs cite does not show that those other states were constitutionally required to treat parking violations as

criminal prosecutions.

Similarly, the two Illinois cases cited by plaintiffs do not support their contention. They point to the description in Haggenjos v. City of Chicago, 336 Ill. 573, 575, 168 N.E. 661, 662 (1929) of a person being "arrested for a violation of the [parking] ordinance" and "found guilty" in "a trial by jury in the municipal court of Chicago" [FN12] to support their argument that the current Ordinance is unconstitutional because it does not provide the protections of a criminal prosecution. That is a non sequitur for the same reasons already set out. People v. Chatmon, 236 Ill.App.3d 913, 924-25, 178 Ill.Dec. 143, 151-52, 604 N.E.2d 399, 407-08 (2d Dist.1992)), where the court ruled that parking on the side of a state road in apparent violation of the Illinois Vehicle Code presented "a reasonable, articulable suspicion of criminal activity," such as to justify a police officer's search of a vehicle following his approach to the vehicle under the authority of Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), is also of no help to plaintiffs. Again the court's language does not show that the illegal parking offense had to be handled criminally as a constitutional matter.

> FN12. That guilty finding gave rise to a fine of $5--and, as indicated, an appeal to the Illinois Supreme Court! Because those events preceded the great depression (the Illinois Supreme Court's decision was essentially contemporaneous with the stock market crash in 1929), inflation alone cannot explain that situation--and sure enough, the case report discloses that plaintiff Haggenjos was a lawyer (and that he appeared of counsel before the Supreme Court).

Mendoza-Martinez Test

[9] Plaintiffs then urge that parking violations are criminal in nature because the sanctions imposed for parking violations are clearly punitive. In that respect United States v. Ward, 448 U.S.

242, 248, 100 S.Ct. 2636, 2641, 65 L.Ed.2d 742 (1980) instructs that a two-step approach should be undertaken in analyzing whether a penalty is civil or criminal.

Ward 's initial inquiry is whether the legislature's expressed purpose was to create a criminal or civil penalty (id.). Here it is clear that City stated its intention to create a civil procedure for adjudicating parking tickets. Code § 9-100-020(a) states:

> The violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking shall be a civil offense punishable by fine, and no criminal penalty, or civil sanction other than that prescribed in the traffic code, shall be imposed.

No clearer indication of legislative intent to create a civil sanction could be imagined.

Ward, 448 U.S. at 248-49, 100 S.Ct. at 2641-42 then shifts the analysis to whether, despite the stated intent, "the statutory scheme was so punitive in purpose or effect as to negate that intention." And Ward, id. ***1191** at 249, 100 S.Ct. at 2641 has confirmed that the analysis is guided by the factors set out in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69, 83 S.Ct. 554, 567-68, 9 L.Ed.2d 644 (1963) (footnotes omitted):

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment--retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purposes assigned are all relevant to the inquiry, and may often point in different directions.

Ward, 448 U.S. at 249, 100 S.Ct. at 2641-42 also instructs that a statute intended to be civil should be found criminal with "only the clearest proof...."

Sanctions for parking violations currently consist of fines that

range from $10 to $100 (Code § 9-100-020(b)) and cannot exceed $200 (Code § 9-4-020). Persons who have accumulated five or more final determinations of parking violation liability may have their vehicle immobilized (Code § 9-100-020), and persons who have accumulated ten or more determinations of liability face the possibility of suspension of their driver's licenses (Code § 9-100-30). However, additional opportunities for hearings are available before the latter two sanctions can be imposed (Code §§ 9-100-020(b) and 9-100-130(c)).

[10] Four of the Mendoza-Martinez factors point strongly toward the conclusion that the fines imposed for violation of the parking regulations are civil. First, a monetary fine limited to $200 is not an affirmative restraint or disability. [FN13] Next, a violation of the parking regulations does not require a finding of scienter, for no state-of-mind requirement is set out anywhere in the parking regulations. [FN14] And to shift from the first two to the last two factors in Mendoza-Martinez, they too strongly support City's case. While every fine does have some retributive and deterrent effects, there are strong alternative reasons for imposing fines for parking violations, including the regulation of traffic flow and the facilitation of commercial activity. [FN15] And because fines are limited to $200 ***1192** by the Code, such fines can hardly be considered excessive in relation to the alternative purposes stated above.

> FN13. Plaintiffs Mem. 39 offers the far-fetched contention that a person who exercises his or her right to an in-person hearing is "restrained" because he or she is subjected to an obligation (the obligation to appear at the hearing) that is not shared by the public generally. That completely misses the point of the analysis, which gauges whether the sanction itself (and not the procedure for challenging the sanction) is an affirmative restraint. Plaintiffs prefer to forget that what must be determined is whether the fine is so punitive as to constitute punishment. Moreover, even if the nature of the

procedure for challenging a ticket were relevant, the notion that the opportunity to challenge a ticket at an in-person hearing is an affirmative restraint is ludicrous. Ticket recipients choose whether or not to contest a ticket in person, and even if a person chooses an in-person hearing no definition of "affirmative restraint" is so broad as to include the voluntary appearance of such a person at an administrative hearing. Finally in that regard, plaintiffs' attempted reliance on Hensley v. Municipal Court, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) is wholly misplaced. Hensley, id. at 351, 93 S.Ct. at 1574-75 ruled that a person released on his own recognizance pending appeal of a misdemeanor conviction was "in custody" for purposes of habeas corpus because he could be ordered to appear before the court at any time. Hensley is patently inapposite here--its situation, in which the petitioner thus constantly faced the possibility of incarceration, bears no analogy to the situation in this case.

FN14. Plaintiffs' argument to the contrary is based both on a misunderstanding of what scienter means and on a misreading of the Code's definition of "parking." Scienter does not mean "purpose" in the lay sense of the word, as plaintiffs contend. Rather scienter denotes action taken "knowingly" (Black's Law Dictionary 872 (6th ed. 1990)). But even apart from that, the parking regulations do not require an improper purpose at any rate. "Parking" is defined by the Code as "the standing of an unoccupied vehicle otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers" (Code § 9- 4-010). That does not mean, as plaintiffs would have it, that a vehicle's "parking" is limited to its standing for the purpose of the actual loading or unloading--on the contrary, the purpose clause clearly qualifies only the temporary-standing exception to the broad definition of parking.

> FN15. Indeed, Saukstelis v. City of Chicago, 932 F.2d 1171, 1173 (7th Cir.1991) has characterized vehicle immobilization by the "Denver boot"-- undoubtedly a form of sanction more severe than a fine--as "a form of economic regulation."

Two of the middle-listed Mendoza-Martinez factors are no worse than equivocal. Again a brief discussion of those factors suffices to show that.

First, although plaintiffs once more urge that fines for parking violations have historically been regarded as punishment, that is certainly less than clear. Plaintiffs point yet again to their extensive analysis of how City has adjudicated parking violations in the past. But once again plaintiffs' aim is off. What is central here is not whether parking violations were prosecuted criminally, but whether the sanctions imposed were "punishment." Monetary assessments have traditionally been imposed under both civil and criminal statutes (see, e.g., Ward v. Coleman, 598 F.2d 1187, 1193 (10th Cir.1979), rev'd on other grounds, 448 U.S. 242, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)). So this factor offers plaintiffs scant (if any) comfort.

Similarly unhelpful is the analysis of whether the sanction is imposed for behavior that already is a crime. Plaintiffs contend that Illinois Vehicle Code § 11-1303 (625 ILCS 5/11-1303) already criminalizes parking in prohibited places because illegal parking is characterized as a "petty offense" (625 ILCS 5/11-1303), which is in turn included within the Illinois Criminal Code (730 ILCS 5/5-1-17). That latter section defines "petty offense" as "any offense for which a sentence to a fine only is provided." Plaintiffs urge that such treatment shows that "petty offense" is criminal, a conclusion that does not really withstand analysis. Their argument is seriously undercut by 625 ILCS 5/11-208.3, which bestows upon municipalities the power to set up an administrative system to "adjudicate civil offenses carrying fines not in excess of $250" (emphasis added). And that statute's

title--"Administration, adjudication of violations of traffic regulations concerning the standing, parking, or condition of vehicles"--certainly suggests that the Illinois General Assembly considers parking violations to be civil offenses. So even giving plaintiffs the benefit of the doubt, that factor is inconclusive.

That leaves only one remaining Mendoza-Martinez factor, the one in which plaintiffs find their strongest support: City's admission that fines do effectuate the goals of retribution and deterrence. But even as to that factor, which may be viewed as cutting in plaintiffs' favor, it is noteworthy that fines also serve other purposes.

In sum, taken as a whole the Mendoza-Martinez factors clearly show that the sanctions imposed for parking violations are civil in nature, and thus that criminal due process protections are not constitutionally required. And that analysis, coupled with what has gone before, dooms plaintiffs' criminal due process claims.

Impartial Decisionmaker (Counts I and VI)

As a separate contention, plaintiffs claim that the administrative arrangement is unconstitutional because it fails to provide a fair and impartial decisionmaker. That notion rests on the contention that because the Code designates to the Department of Revenue the task of administering the Ordinance (Code § 2-80-040(m)) and because the Department of Revenue is also involved in obtaining revenue for City (Code § 2-80-040), the procedure is inconsistent with due process.

To that end plaintiffs attempt to rely heavily on three Supreme Court cases-- Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), Ward v. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) and Gibson v. Berryhill, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973)--for the proposition that due process is not afforded when an adjudicator has (or potentially has) a direct or indirect pecuniary interest in the

outcome of a case. Plaintiffs place extra emphasis on Ward, which held (409 U.S. at 60-61, 93 S.Ct. at 82-84) that "the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court," thus barring him from presiding over the ***1193** adjudication of traffic offenses when such a significant part of the village's funds came from fines levied for such violations. [FN16]

> FN16. Tumey and Gibson are less helpful to Plaintiffs. In Tumey the judge (the village mayor) had a direct pecuniary interest in the outcome of the cases that he was trying because he personally received the costs imposed on each convicted defendant (273 U.S. at 523, 47 S.Ct. at 441). Similarly, in Gibson the arrangement under which the state Board of Optometry heard challenges to optometrist licenses was found unconstitutional because the private optometrists that served on the Board potentially had an indirect but personal pecuniary interest in the outcome (411 U.S. at 578-79, 93 S.Ct. at 1697-98).

[11][12] To begin with, plaintiffs' burden in proving its allegation of partiality is high: They "must overcome a presumption of honesty and integrity in those serving as adjudicators ..." (Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712 (1975)). That being said, there are two significant differences between the scheme held unconstitutional in Ward and City's administrative arrangement. First, Ward, 409 U.S. at 58, 93 S.Ct. at 82 considered it significant that "[a] major part of village income is derived from the fines, forfeitures, costs, and fees imposed by [the mayor] in the mayor's court." Plaintiffs have made no such assertion here (nor, to this Court's knowledge, could they conscientiously do so). Second, and more important, Ward was careful to distinguish Dugan v. Ohio, 277 U.S. 61, 48 S.Ct. 439, 72 L.Ed. 784 (1928), a case that had held (Ward, 409 U.S. at 60- 61, 93 S.Ct. at 83) that a mayor who had judicial functions but only limited executive authority was "too remote to warrant a presumption of bias toward conviction in prosecutions

before him as a judge."

Dugan and not Ward is unquestionably more closely analogous to the situation here. As for the adjudicators themselves, the hearing officers, they are independent contractors (not City employees) hired at a modest stipend--$35 per hour--with no quotas, no contingent arrangements and no other economic stake in the outcome of their hearings. And even if those up the administrative ladder (the Parking Administrator or the head of the Department of Revenue) were to be scrutinized (presumably on the attenuated notion that they might be predisposed toward hiring "hanging" hearing officers), neither of them has a level of executive authority anywhere close to that of the mayor in Ward. Indeed they could not do so, because the executive authority over City is shared by the Mayor and City Council, with the Department of Revenue having no statutorily defined role (65 ILCS 20/21 et seq.).

Again this plaintiffs' claim cannot survive City's motion to dismiss. It is time to turn to the next one.

Waiver of Right to a Hearing (Counts III and VIII)

Plaintiffs further claim that the Ordinance is unconstitutional because it is set up in such a way that ticket recipients unknowingly waive their due process right to an in-person hearing. This is so, plaintiffs claim, because ticket recipients who choose the adjudication-by-mail option unwittingly forfeit the right to an in-person hearing.

[13][14] At its core "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner' " (Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (emphasis added), quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965)). That "opportunity to be heard" calls for a notice "reasonably calculated, under all the circumstances, to

apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)).

Here plaintiffs do not suggest that ticket recipients are not presented with ample notice of an opportunity for an in-person hearing. Indeed, Complaint ¶ 22 (with respect to plaintiff Van Harken) admits:

> 22. The Parking Violation Notice provided information on how to contest the notice:
> a. The recipient could check the box marked "Contest by Mail" and send a ***1194** signed statement setting forth facts that established a defense.
> b. The recipient could check the box marked "Request for In-Person Hearing."

[15] Thus blocked from launching a direct attack, plaintiffs offer up a slightly different wrinkle by claiming that the Ordinance is unconstitutional because ticket recipients who choose an adjudication by mail are somehow tricked into waiving their right to an in-person hearing. That of course misses the entire point of the notice requirement: City provides ticket recipients with the opportunity to be heard at an in-person hearing, which is all that due process demands. It is absurd to contend that the person notified is somehow deprived of due process because City offers another option--the adjudication by mail--that replaces the in-person hearing when the ticket recipient so chooses. Because the ticket recipients are given express notice of the opportunity for a hearing, this aspect of plaintiffs' lawsuit is truly frivolous.

Proof of "Parking" (Counts V and X)

As best this Court can interpret plaintiffs' rambling Counts V and X, there are two prongs to this facet of their case:

> 1. As written, the Ordinance relieves City of proving that the ticket recipients "parked at all" (Complaint ¶ 157).

2. Also as written, the Ordinance deprives ticket recipients of the possible defense that they "did not engage in the conduct of parking their vehicles in prohibited locations" (Complaint ¶ 160).

Both of those contentions are wholly empty.

[16] First, as this Court pointed out in its July 28, 1995 oral ruling, any claim that the Ordinance relieves City of proving that ticket recipients were "parked" in violation of the ordinance involves a misreading of the statute. As stated earlier, the Ordinance defines "parking" as "the standing of an unoccupied vehicle otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers" (Code § 9-4- 010). "Parking" in that sense is established in prima facie terms by the very fact that the ticketing officer was able to place the ticket on the unoccupied vehicle--if a loading or unloading operation were in progress, the vehicle operator would be present to receive the ticket.

Plaintiffs attempt to place the burden on City to prove independently of the ticket itself that the ticketed vehicle was standing unoccupied and was not parked temporarily for the purpose of loading or unloading property or passengers. Irrespective of where the ultimate burden of persuasion on that issue might lie, in light of what has been said here the common sense reading of the Ordinance would instead call for the ticket recipient to produce some evidence, in response to the prima facie showing of the ticket itself, that the vehicle was parked "temporarily for the purpose of and while actually engaged in loading or unloading property or passengers" in order to challenge the ticket.

[17] As to plaintiffs' second contention that they are precluded from arguing that their vehicle was not parked at a prohibited location because the Code limits them to five grounds of defense, Code § 9-100-060(5) specifically gives the ticket recipient the opportunity to show:

> [t]hat the facts alleged in the parking violation notice are inconsistent or do not support a finding that the specified regulation was violation [sic].

Obviously that language affords the opportunity to testify, for example, that "my vehicle was not parked at 219 South Dearborn Street" (emphasis on "219 South Dearborn Street," not on "parked").

Here too plaintiffs have failed to state a claim. That leaves only the final set of claims for consideration.

Substantive Due Process (Counts IV and IX)

Plaintiffs finally assert that the Ordinance violates substantive due process, urging that even if ticket recipients receive the due-process-required notice and opportunity for hearing, the administrative arrangement is arbitrary and capricious because it is unfairly skewed toward a finding of liability against the ticket recipient. Plaintiffs point out that ***1195** the Ordinance makes the information contained in the notice prima facie evidence of liability, and they state further that hearing officers regularly make determinations of liability without additional evidence or sworn testimony from the ticketing officer.

[18][19] Any such substantive due process claim does not fall on fertile soil. Substantive due process "allows persons harmed by state regulation to complain that the regulation is so unreasonable a deprivation of life, liberty, or property that it is unconstitutional even if adopted and applied in conformity with the most rigorous procedural safeguards, so that no denial of due process of law in the usual sense can be shown" (Illinois Psychological Ass'n v. Falk, 818 F.2d 1337, 1342 (7th Cir.1987)). Except in cases when "fundamental rights" are implicated--and there is no colorable argument that any such fundamental right is involved here--substantive due process claims fail unless the challenger can show that the challenged law bears no rational connection to a governmental interest or that it is so excessive in relation to a

valid governmental purpose as to be punitive (Reno v. Flores, 507 U.S. 292, 303-04, 113 S.Ct. 1439, 1448, 123 L.Ed.2d 1 (1993)). [FN17]

> FN17. City also attempts to rely on suggestions in a number of Seventh Circuit decisions that a person advancing a substantive due process claim must also allege a violation of some other constitutional right (see the discussion in Polenz v. Parrott, 883 F.2d 551, 557-58 (7th Cir.1989)). There are several flaws in City's position, but no side excursion into that analysis is necessary because City prevails without having to lean on that reed.

[20] Plaintiffs cannot meet that high standard. Their primary argument is that the administrative arrangement is irrational because it considers the facts contained in the violation notice to be prima facie evidence of a parking violation. [FN18] They say that any such rule is constitutionally impermissible because a ticket recipient can be found liable without City having provided any evidence outside of the "accusations" contained in the notice.

> FN18. Code §§ 9-100-070(c) and 9-100-080(e) state:
> No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a parking violation notice, or a copy thereof, issued in accordance with Code § 9-100-030 shall be prima facie evidence of the correctness of the facts specified therein.

That mischaracterizes the administrative adjudication procedure set out in the Ordinance. It is true, as plaintiffs assert, that the information in the notice is considered prima facie evidence. But the same Code passages that contain that prima facie treatment (Code §§ 9-100-070(c) and 9-100-080(e)) also require that the information on the notice meet the following requirements (set out at Code § 9-100-030(b)):

> The issuer of the notice shall specify on the notice his identification number, the particular parking regulation allegedly

violated, the make and state registration number of the cited vehicle, and the place, date, time and nature of the alleged violation and shall certify the correctness of the specified information by signing his name as provided in Section 11-208.3 of the Illinois Vehicle Code, as amended.

Thus City is not automatically entitled to treat the information in the notice alone as prima facie evidence--the additional quoted requirements must be complied with. Further, ticket recipients have a full opportunity to rebut the prima facie case either at an in-person hearing or via the adjudication by mail. And if ticket recipients opt for in-person hearings, they may request that the hearing officer subpoena witnesses to enable the recipients to support their defenses (Code § 9-100-080(d)). If any ticket recipient wishes to challenge liability, City is simply not able to railroad a parking violation through to a finding of liability based on the information in the notice alone unless it is able to withstand that challenge under the scrutiny of a hearing officer.

In any case, the administrative structure set up by the Ordinance is rationally connected to a governmental interest, specifically the "fair and efficient enforcement of [parking] regulations" (Code § 9-100-010(c)). From City's perspective it is able to enforce its parking regulations and to process parking tickets without overburdening the court system. ***1196** But City is not the only party that benefits from the Ordinance's administrative structure: Ticket recipients have an opportunity to challenge a ticket without being forced to comply with formal rules of evidence or to hire an attorney. Those are clearly rational reasons supporting the arrangements set up by the Ordinance.

[21] Plaintiffs' Mem. 53-58 also contends that the administrative procedure is arbitrary and irrational because a preponderance-of-the-evidence standard requires the ticketing officer to appear before the hearing officer so that the hearing officer can evaluate the officer's credibility--something that does not invariably take place. Suffice it to say that it is rational for the

Ordinance not to mandate the ticketing officer's appearance to testify in each case in which a parking ticket is issued. If the officer does not appear, and if the ticketed person's liability or lack of liability for violation of a parking regulation turns on the credibility of the officer, City may suffer the consequences--and if the ticketed person wishes to bring the officer to court in support of his or her own position, the hearing officer's subpoena power is adequate to the purpose. But to require ticketing officers to testify in support of each challenged ticket would be unduly burdensome on City.

Plaintiffs' final contention (Mem. 58) is that the Ordinance is irrational because it does not give the ticket recipient the opportunity to mount the defense that "he did not 'park.' " That argument, based on a misreading of the Ordinance, has already been dealt with.

In sum, plaintiffs cannot meet the heavy burden of showing that the Ordinance is not rationally connected to a government interest. Their substantive due process claim is also dismissed.

Conclusion

This Court has certified the class of parking ticket recipients identified at the outset of this opinion. But they have gained a procedural ticket of entry to this federal court only to have that ticket punched as substantively invalid. All of the counts of the Complaint, and hence this action itself, are dismissed with prejudice.

STATUTES AND ORDINANCES INVOLVED IN THIS CASE

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be . . . deprived of life, liberty or property without due process of law.

The Fourteenth Amendment to the United States Constitution provides inpertient part:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action in law, suit inequity, or other proper proceeding for redress.

28 U.S.C. § 1331:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The Chicago Code of 1911, § 85:

> **85. Department established.** There is hereby established an executive department of the municipal government of the city which shall be known as the department of law and which

shall embrace the corporation counsel and such number of assistants and clerks as the city council may by ordinance provide; one of such assistants shall be known as the city attorney and another as the prosecuting attorney.

The Chicago Code of 1911, § 98:

City Attorney

98. Duties. The city attorney shall assist the corporation counsel in conducting the law business of the city and shall have especial charge of all actions in tort against the city arising out of damages or injury caused by defective streets or sidewalks.

The Chicago Code of 1911, § 102:

Prosecuting Attorney.

102. Duties. The prosecuting attorney shall be charged with the prosecution of all actions for violation of the ordinances of the city. He shall institute an action in every case where there has been a violation of any city ordinance, when instructed so to do by the corporation counsel, or the chief officer of any department, or upon complaint of any other person, when in the judgment of the corporation counsel the public interest requires that the same be prosecuted.

The Chicago Code of 1911, § 2437:

2437. Vehicles standing on street. No person owning . . . any vehicle, propelled with by animal or other power, shall cause or permit such vehicle to stand in any public street or alley in the City of Chicago . . . for a longer period than sixty minutes, unless such vehicle shall be in charge of a driver or operator who shall be on or about said vehicle.

The Chicago Code of 1911, § 2438:

2438. Penalty. Any person owning . . . any vehicle who shall cause or permit such vehicle to stand on any of the streets or

alleys . . . in violation of [§ 2437] shall be fined not less than five dollars nor more than one hundred dollars for each offense.

The Chicago Code of 1922, § 104:

104. Department established. There is hereby established an executive department of the municipal government of the city which shall be known as the department of law, and which shall embrace the corporation counsel and such number of assistants and clerks as the city council may by ordinance provide; one of such assistants shall be known as the city attorney and another as the prosecuting attorney.

The Chicago Code of 1922, § 118:

City Attorney

118. Duties. The city attorney shall assist the corporation counsel in conducting the law business of the city and shall have especial charge of all actions in tort against the city arising out of damages or injury caused by defective streets or sidewalks.

The Chicago Code of 1922, § 122:

Prosecuting Attorney.

122. Duties. The prosecuting attorney shall be charged with the prosecution of all actions for violation of the ordinances of the city. He shall institute an action in every case where there has been a violation of any city ordinance, when instructed so to do by the corporation counsel, or the chief officer of any department, or upon complaint of any other person, when in the judgment of the corporation counsel the public interest requires that the same be prosecuted.

Chicago Municipal Code of 1922, § 3853:

3853 Parking in front of theaters and hotels. No person, firm or corporation owning, controlling, driving or operating

any vehicle propelled either by animal or other power . . . to stand or park longer than necessary to load or unload passengers who are ready to enter or depart therefrom, between the hours of 1:30 p.m. and 5 p.m., and 8 p.m. and 11 p.m., within a space of fifty feet immediately in front of the entrance of any theater or hotel.

Chicago Municipal Code of 1922, § 3854:

3854. Signs prohibiting parking. It shall be the duty of the commissioner of public works to cause suitable signs to be placed, installed or painted, in such manner as he deems proper, and to maintain same, at all places which have been and which may from time to time hereafter be designated by order of the city council as places where no parking of vehicles should be allowed. Such signs shall contain the words "No Parking" and such other words as may be necessary to apprise the public of the traffic regulation at the particular place, and the lettering thereon shall be placed and readily visible for at least fifty feet.

Chicago Municipal Code of 1922, § 3856:

3856. Motor vehicle, machinery running without attendant. No person, owning, controlling, driving or operating any vehicle, propelled either by animal or other power, shall cause or permit such vehicle to stand continuously in one place in any public street or alley in the city of Chicago, upon which street cars are operated within the district bounded on the north by the north line of Lake street, on the east by the east line of Wabash avenue, on the south by the south line of Harrison street and on the west by the est line of Market street, between the hours of ten o'clock a.m. and four o'clock p.m., except on Sundays and legal holidays for a longer period than thirty minutes . . . .

Chicago Municipal Code of 1922, § 3857:

3857. Penalty. Any person owning, controlling, driving or operating any vehicle who shall cause or permit such vehicle

to stand on any of the streets or alleys, within the aforesaid district, in violation of the provisions of the two preceding sections, shall be fined not less than five dollars nor more than one hundred dollars for each offense.

Chicago Municipal Code of 1922, § 3858:

3858 Parking autos in single line at curb—not permitted near fire hydrant. No person, firm or corporation owning, controlling, driving or operating any vehicle drawn or propelled by animal or other power shall permit such vehicle to stand on any public street or alley in the city in any other manner than in one line parallel to the curb on the right-hand side and placed so that neither right wheel shall be further than six inches from the curb . . .

Chicago Municipal Code of 1922, § 3859:

3859. Motor vehicle, machinery running without attendant. No person, firm or corporation owning, controlling or operating any motor vehicle or motor bicycle shall permit any part of the machinery . . . to be left running without an attendant. Any person violating any of the provisions of this section shall be fined twenty-five dollars for each offense.

Revised Chicago Code of 1931, § 31:

31. Department established. There is hereby established an executive department of the municipal government of the city which shall be known as the department of law, and which shall embrace the corporation counsel and such number of assistants and clerks as the city council may by ordinance provide; one of such assistants shall be known as the city attorney and another as the prosecuting attorney.

Revised Chicago Code of 1931, § 48:

City Attorney

48. Duties. The city attorney shall assist the corporation

counsel in conducting the law business of the city, and shall have especial charge of all actions in tort against the city arising out of damages or injury caused by defective streets or sidewalks. He shall have authority, under the supervision of the corporation counsel, when directed by the city council, to make settlements of lawsuits and controverted claims against the city.

Revised Chicago Code of 1931, § 52:

Prosecuting Attorney.

52. Duties. The prosecuting attorney shall be charged with the prosecution of all actions for violation of the ordinances of the city. He shall institute an action in every case where there has been a violation of any city ordinance, when instructed so to do by the corporation counsel, or the chief officer of any department, or upon complaint of any other person, when in the judgment of the corporation counsel the public interest requires that the same be prosecuted.

Revised Chicago Code of 1931, § 1970:

Park. To stand a vehicle, whether occupied or not, for a period of time greater than is reasonably necessary for the actual loading or unloading of persons or materials."

Revised Chicago Code of 1931, §2013:

2013. Standing prohibited in specified places. At any time it shall be unlawful for the operator of a vehicle to stand such vehicle in any of the following places except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic sign or signal . . .

Revised Chicago Code of 1931, § 2014:

2014. Standing for loading only in certain places. (a) During the times specified herein it shall be unlawful for an operator to stand a passenger vehicle for a period of time

longer than is necessary for the loading or unloading of passengers, provided such loading or unloading shall not consume more than three minutes, nor for an operator to stand any commercial vehicle for period of time longer than is necessary to load, unload and deliver materials, provided that the loading, unloading and delivery of said materials shall not consume more than thirty minutes, in any of the following places . . .

Revised Chicago Code of 1931, § 2015:

2015 Parking prohibited on certain streets during certain hours. No person, firm or corporation owning, controlling, driving or operating any passenger vehicle shall cause or permit such vehicle to stand for period longer than is necessary for the reasonably expeditious loading or unloading of passengers . . .

Revised Chicago Code of 1931, § 2016:

2016. Early morning parking limited. It shall be unlawful to park a vehicle upon any street for a period of time longer than one hour between the hours of 2 a.m. and 6 a.m. of any day.

Revised Chicago Code of 1931, § 2017:

2017. Parking in residential streets. The commissioner of public works shall erect signs prohibiting parking in any block designated by ordinance containing such prohibition which may be passed by the city council, during such hours as are prescribed therein. It shall be unlawful to violate such restrictions when duly ordained by the city council.

Revised Chicago Code of 1931, § 2018:

2018. Standing or parking close to curb. No vehicle shall be parked with the left side of said vehicle in a roadway other than parallel with the curb and with the two right wheels of the vehicle within six inches of the regularly established curb

. . .

Revised Chicago Code of 1931, § 2019:

§ 2019 Parking vehicles for sale. It shall be unlawful for any person to park or cause to be parked any vehicle upon any street for the purpose of displaying it for sale, or to park any vehicle upon any business street from which said vehicle merchandise is being sold, except in duly established market places.

Revised Chicago Code of 1931, § 2031:

2031. Penalty Any person violating any of the provisions of this chapter, or any rule or regulation made in compliance therewith, upon conviction thereof, shall be punished by a fine of not to exceed two hundred dollars.

Municipal Code of Chicago of 1939 with amendments to and including January 1, 1984, § 27-95:

Violation of Chapter Provisions

27-95. Every person convicted of a violation of any of the provisions of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than two hundred dollars for each offense.

Municipal Code of Chicago of 1939 with amendments to and including January 1, 1984, § 27-29:

Any person that shall violate or fail to comply with the provisions of this section shall be *fined* not less than one dollar nor more than twenty-five dollars for each offense.

Municipal Code of Chicago of 1939 with amendments to and including January 1, 1984, § 27-1:

Parking (to park). The standing of a vehicle, whether occupied or not, upon a roadway, for a period of time greater than is

reasonably necessary for loading or unloading, or in obedience to traffic regulations or official traffic signs or signals.

Municipal Code of Chicago (1990) § 9-4-010:

"Parking (to park)" means the standing of an unoccupied vehicle otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

Municipal Code of Chicago (1990) § 9-100-010(a):

The purpose of this chapter is to provide for the administrative adjudication of violations of ordinances regulating vehicular standing and parking within the city and to establish a fair and efficient system for the enforcement of such regulations.

Municipal Code of Chicago (1990) § 9-100-020:

The violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking shall be a civil offense punishable by fine, and no criminal penalty, or civil sanction other than that prescribed in the traffic code, shall be imposed.

Municipal Code of Chicago (1990) § 9-100-080(e):

(e)No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a parking violation notice, or a copy thereof, issued and signed in accordance with Section 9-100-030 shall be prima facie evidence of the correctness of the facts specified therein.